Supreme Court, U.S.
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No. 98-1477

In The

Supreme Court of the United States

October Term, 1998

JOHNNY GEOTES, D.V.M.,

Petitioner,

v.

MISSISSIPPI BOARD OF VETERINARY MEDICINE, et al.,

Respondents.

On Petition For Writ Of Certiorari To The United States Court Of Appeals For The Fifth Circuit

BRIEF IN OPPOSITION TO PETITION FOR WRIT OF CERTIORARI

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STATEMENT OF FACTS

The Petitioner, Johnny Geotes, a Mississippi veterinarian, filed an action in the United States District Court for the Southern District of Mississippi on November 13, 1996, seeking to enjoin a pending administrative action against Geotes by the Mississippi Board of Veterinary Medicine. The subject matter of the administrative action was an investigation of a possible violation of Miss. Code Ann. § 73-39-19(k), which prohibits a veterinarian from employing any person who is practicing veterinary medicine unlawfully. In a letter dated May 15, 1996, Geotes had been informed by the Board of two complaints against him relating to this charge and was notified of a hearing to be held on June 6, 1996. That hearing was postponed by mutual agreement, and the hearing was continued indefinitely after one of the two complainants notified the attorneys for Geotes that she wished to withdraw her complaint.

On October 23, 1996, the Board mailed a new notice to Geotes, informing him of a hearing on November 15, 1996 concerning violations of M.C.A. § 73-39-19(k). Accompanying the hearing notice were two written complaints from Crystal McKeever and Ann Moran, both former employees of Geotes, who described in detail how Geotes authorized them to perform veterinary procedures in his absence. The notice fully informed Geotes of his procedural rights before the Board, including his right to subpoena witnesses, to present evidence, and to be represented by counsel at the hearing.

On November 13, 1996, Geotes filed his suit in federal court seeking to enjoin the Board's hearing. Geotes

alleged in his suit that the Board was inherently biased against him because it derived its revenue, and thus its payments to Board members, from fines imposed upon those it punished.[1] In his complaint, Geotes did not ask for either a temporary restraining order or preliminary injunction, and he did not comply with Rule 8 of the Uniform Local Rules of the United States District Courts for the Northern and Southern Districts of Mississippi, which requires movants who wish to have a motion on an "urgent or necessitous" matter to contact the courtroom deputy or law clerk for the judge to arrange a definite time and place for the hearing on the motion. Thus, the district court did not issue a temporary restraining order or injunction, and the Board proceeded with the hearing on November 15, hearing evidence from McKeever and Moran. Geotes was present at the meeting but did not participate. The Board then elected to continue the hearing until December 16, 1996 in order to permit clarification of the legal rights and obligations of the parties in view of the federal suit. On December 16, 1996, the Board reconvened and offered Geotes a chance to introduce evidence, but his counsel declined to do so. After further consideration, on February 28, 1997, the Board decided to suspend Geotes's license to practice for a period of one

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[1] In fact, as the Board pointed out to the district court, the Board has not imposed any fines in license suspension or revocation proceedings at any time in the past. Moreover, even if the Board had imposed fines, the imposition of such fines could not affect the amount of compensation received by members of the Board, whose statutory daily stipend of $40 is completely funded by money received from fees imposed in a variety of activities, such as examination fees, license fees, and fees for continuing education courses.

year. Geotes then filed an appeal in the Chancery Court of Harrison County and obtained a stay of the suspension of his license. On May 13, 1997, the federal district court issued its ruling, declining to hear Geotes's complaint on the basis of the abstention doctrine of *Younger v. Harris*, 401 U.S. 37 (1971). In particular, the court ruled that abstention was appropriate because the Board had already ruled and had not imposed a fine, and thus Geotes had passed the point in the state proceedings at which he might have encountered pecuniary bias. The court specifically found that Geotes had ample opportunity to raise his constitutional concerns in state court, and thus intervention by the federal court was no longer necessary or appropriate.

ARGUMENT

THIS CASE PRESENTS NO COMPELLING ISSUE MERITING THE ATTENTION OF THE COURT.

There can be no more firmly established principle than the determination of this Court that the docket of the United States Supreme Court is reserved for cases of important national interest and that the Court's discretion to grant a petition for a writ of certiorari is to be exercised in only very limited circumstances. *See, e.g., Fay v. Noia*, 372 U.S. 391, 436 (1963) ("[A] writ of certiorari . . . is not a matter of right . . . and will be granted only where there are special and important reasons therefor"); *Fields v. United States*, 205 U.S. 292 (1907) (certiorari to review a judgment of a court of appeals will not be granted where such case, however important it may be to the petitioner,

does not involve a question of gravity and general importance); *Hamilton-Brown Shoe Co. v. Wolf Bros. & Co.*, 240 U.S. 251, 258 (1916) (certiorari jurisdiction is "to be exercised sparingly, and only in cases of peculiar gravity and general importance").

The codification of this principle is found in Rule 10 of the Supreme Court Rules, which states: "A petition for a writ of certiorari will be granted only for compelling reasons." Rule 10(a) summarizes the situations in which there will likely be compelling reasons for the Court to exercise its certiorari jurisdiction over a case arising from federal court:

> [A] United States court of appeals has entered a decision in conflict with the decision of another United States court of appeals on the same important matter; has decided an important federal question in a way that conflicts with a decision by a state court of last resort; or has so far departed from the accepted and usual course of judicial proceedings, or sanctioned such a departure by a lower court, as to call for an exercise of this Court's supervisory power[.]

Rule 10 further cautions that "[a] petition for a writ of certiorari is rarely granted when the asserted error consists of erroneous factual findings or the misapplication of a properly stated rule of law."

Geotes has not provided the Court with any compelling reason for the Court to exercise its certiorari jurisdiction. Indeed, the present case involves no important national issue, no important federal question, no split among the circuits on an issue before the courts below, and no departure from an accepted and usual course of

judicial proceedings. Rather, Geotes's complaint in this action centers on the fact that in this particular case the district court denied his request for an order enjoining allegedly biased disciplinary proceedings before a state administrative board. However, as noted above, the actual basis for the district court's determination that abstention was appropriate was the fact that by the time the district court reviewed and addressed Geotes's complaint the state administrative proceedings were over and the case was before the Chancery Court of Harrison County, Mississippi, a judicial body which was not alleged by Geotes to have pecuniary bias and which clearly had the jurisdiction and authority to hear his arguments concerning the alleged pecuniary bias of the Board. The district court pointed out that the failure of the district court to intervene at the administrative stage of the proceedings was in large part Geotes's fault, stating that Geotes "did not request of the court or indicate to the court that immediate or expedited consideration of the motion was needed, perhaps because plaintiff believed, albeit erroneously, that the Board had voluntarily suspended its proceedings." (Memorandum Opinion and Order at 16 n.8.)

Thus, while perhaps interesting in the abstract, the legal issues raised by Geotes in his first argument before this Court have nothing to do with his case and were never addressed by the courts below. The district court did not rule, as implied by Geotes, that it would not intervene to enjoin a state administrative proceeding upon a claim of pecuniary bias even where a legally sufficient, and timely and procedurally adequate, request was before the court. The district court's ruling did not

provide that Geotes had no forum for his federal constitutional claims, and most certainly did not hold, as claimed by Geotes, that "Geotes was subject to the challenged bias of the Veterinary Board, without an avenue for addressing that bias before being convicted." (Petition at 5.)[2] The district court did not rule on the issue of when a state prosecution is considered pending for abstention purposes. Rather, the district court simply ruled that Geotes had failed to apprise the court of the need to act immediately, and that by the time the district court did act the pecuniary bias claim had been rendered moot by the fact that the Board had not imposed any monetary sanctions upon Geotes. The court of appeals affirmed without issuing an opinion.

Such a narrow ruling, resting solely to the particular procedural events of one case, provides no grounds for review by this Court.

Similarly, Geotes's second argument to this Court, that this Court should review this case because there is a split in the circuits as to what standard of review applies to abstention review, provides no reason for this Court to grant certiorari in this case. The issue of the standard of review was never briefed below by the parties and was not mentioned by the court of appeals in its ruling, which, as noted above, simply affirmed without opinion the decision of the district court. In fact, Geotes cannot tell this Court what standard of review was employed by the court of appeals. On such a record, which is bereft of

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[2] Despite Geotes's use of the term "convicted," there were no state criminal proceedings against Geotes, and he faced only the loss of his right to practice veterinary medicine.

any indication of what standard of review was applied, and which contains no argument from the parties on the issue, this Court has no reason to visit the issue of the appropriate standard of review in an abstention case. *See, e.g., EEOC v. Federal Labor Relations Authority*, 476 U.S. 19, 24 (1986) ("Our normal practice . . . is to refrain from addressing issues not raised in the Court of Appeals"); *Ellis v. Dixon*, 349 U.S. 458 (1955) (where issue was not raised below, that issue was not open for review on petition for writ of certiorari); *Rogers v. Lodge*, 458 U.S. 613, 628 n.10 (1982) (contention not raised in the court of appeals and not addressed by that court will not be addressed).

CONCLUSION

For all of the foregoing reasons, this Court must deny the Petition for Writ of Certiorari.

Respectfully submitted,

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